

Remarks

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

Allowable Subject Matter

The indicated allowability of claim 10 is noted with appreciation. Claim 10 has been rewritten in independent form and therefore is now in proper form for allowance.

Claim Rejections - 35 USC § 102

In the Office Action, claim 1 was rejected as being anticipated by Bertuch. The Examiner's comments in support of the rejection have been carefully considered, but the Examiner provides no comment on how Bertuch discloses:

a tensioning device is provided proximate the first end, the tensioning device being configured to move axially the holding element after an implant has been connected to the second end of the holding element so as to move the implant into abutment with an adjacent end of the guiding sleeve and place the elongated intermediate portion under tension.

Later on in the Response to Arguments section, the Examiner states that the handle 7 in Bertuch can be considered a "tensioning device" as set forth in claim 1. Even if the handle 7 could be considered a tensioning device, the Examiner provides no explanation as to how the handle is configured to move axially the holding element after an implant has been connected to the second end of the holding element so as to move the implant into abutment with an adjacent end of the guiding sleeve and place the elongated intermediate portion of the holding element under tension. If the elements 23, 31 and 55 are considered the "holding element" and the element 13 the "sleeve" as contended by the Examiner, it is not seen how the handle is in any way configured to cause the recited abutment and place the elongated intermediate portion under tension.

Since Bertuch does not disclose each feature of claim 1, the rejection of claim 1 under 35 USC § 102 cannot be maintained.

Regarding claim 14, the Examiner contends that positioning instrument of Bertuch is capable of being detected and tracked by known medical navigation systems. Thus, the Examiner apparently concludes that Bertuch has a marker trackable by a navigation system. Although issue is taken with this contention, claim 14 has been

amended to refer to "markers specifically designed to be trackable by a navigation system, such as reflective markers, LED markers, magnetically trackable markers, etc. Bertuch does not disclose markers as recited in claim 14. Consequently, the rejection of claim 14 cannot be maintained.

Claim Rejections - 35 USC § 103

Regarding the rejection of claims 4 and 5, claim 4 has been amended to refer to "markers specifically designed to be trackable by a navigation system, such as reflective markers, LED markers, magnetically trackable markers, etc. Neither Bertuch nor Bertin discloses markers as recited in claim 4. Consequently, the rejection of claim 4 cannot be maintained.

The dependent claims recite still further features not found in a combination similar to that claimed. Inasmuch as the dependent claims are allowable for at least the same reasons as the claims from which they depend, the Examiner's comments in respect thereof need not be addressed and this should not be construed to be an acquiescence in the contentions made by the Examiner.

Conclusion

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

/Don W. Bulson/
By _____

Don W. Bulson, Reg. No. 28,192

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115
(216) 621-1113